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In re Application of

Kurt W. Piersol, et al.

Application No. 09/439,152

Filed: November 12, 1999

For: **SYSTEM FOR CAPTURING FACSIMILE
DATA IN AN ELECTRONIC DOCUMENT
MANAGEMENT SYSTEM**

This is a decision on the Petition to Withdraw Holding of Abandonment filed October 21, 2004 pursuant to 37 C.F.R. § 1.181. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to respond in a timely manner to the non-final Office action mailed on January 14, 2004. A Notice of Abandonment was mailed on October 14, 2004.

Petitioner asserts that a proper amendment/response was in fact timely filed on April 12, 2004. In support of the petition, Petitioner submitted a copy of a date-stamped post card receipt acknowledging receipt of the amendment/response and a transmittal letter on April 15, 2004. Petitioner submitted a copy of the aforementioned amendment/response and transmittal letter with the instant petition.

The original response is not of record in the file and cannot be located. However, M.P.E.P. § 503 states, “[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.” Accordingly, it is concluded that the amendment/response was received in the Office on April 15, 2004, but was not matched with the application file.

MPEP §512 states in part “Under 37 CFR 1.8, a person may state on certain papers directed to the Office (exceptions are stated in 37 CFR 1.8), the date on which the paper will be deposited in the United States Postal Service or transmitted by facsimile. If the date stated is within the period for reply, the reply in most instances will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for reply. The Certificate of Mailing procedure does not apply to papers mailed in a foreign Country. [emphasis added]

Paper No. 11

MAIL

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DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

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The date-stamped on the post card of April 15, 2004, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The subject petition did not have a personal statement from the person signing the certificate of mailing, i.e., a statement from Ms. Deborah A. McGovern. However, the transmittal letter did have the box checked which authorized the U.S. Patent and Trademark Office to charge any extension fee under 37 C.F.R. § 1.117 to Applicant's deposit account, i.e., "Any extension or petition fees under 37 C.F.R. § 1.17."

37 C.F.R. § 1.136 (a)(3) Extensions of time, states in part:....

An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission.

In a telephone conversation between the special programs examiner and Applicant's representative, Kevin Shao, on November 5, 2004, it was agreed to charge the necessary one month extension of time. Accordingly, Applicant's deposit account has been charged the amount for one month extension of time.

Therefore, the amendment/response was timely received as of April 15, 2004. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file will be forwarded to the Technology Center's technical support staff for entry of the amendment. Thereafter, the application file will be forwarded to the examiner for action in due course.



Dwayne Bost
Special Programs Examiner
Technology Center 2600
Communications